

Proposed technical amendment:

**SECTION #.(a)** G.S. 36F-2 reads as rewritten:

**"§ 36F-2. Definitions.**

The following definitions apply in this Chapter:

...  
(5) ~~Reserved.~~

...  
(21) ~~Reserved.~~  
...." (2016-53, s. 1.)

**SECTION #.(b)** G.S. 36F-13 reads as rewritten:

**"§ 36F-13. Disclosure of other digital assets held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A ~~certified~~-verified copy of the trust instrument or a certification of the trust under G.S. 36C-10-1013.
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
- (4) If requested by the custodian, any of the following:
  - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
  - b. Evidence linking the account to the trust." (2016-53, s. 1.)

Explanation: S.L. 2016-53, s. 1, mistakenly enacted the word "Reserved." twice by underlining it in two places. See G.S. 120-20.1. If the words are removed, LexisNexis will leave the appropriate editorial insertions explaining that subdivisions (5) and (21) are reserved for future codification purposes. The proposed technical amendment also substitutes "verified" for "certified" in G.S. 36F-13(2) in order to match G.S. 36F-12(2). The North Carolina Comment to G.S. 36F-12 states that the word "verified", rather than the word "certified", conforms to this State's practice.

Excerpt from S.L. 2016-53:

**SESSION LAW 2016-53  
SENATE BILL 805\***

AN ACT TO ENACT THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT AND MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

**PART I. REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT**

**SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

**"Chapter 36F.**

**"Revised Uniform Fiduciary Access to Digital Assets Act.**


**"§ 36F-1. Short title.**

This Chapter may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act.

**"§ 36F-2. Definitions.**

The following definitions apply in this Chapter:


- (1) Account. – An arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (2) Agent. – An attorney-in-fact granted authority under a durable or nondurable power of attorney.
- (3) Carries. – Engages in the transmission of an electronic communication.
- (4) Catalogue of electronic communications. – Information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
- (5) Reserved.
- (6) Content of an electronic communication. – Information concerning the substance or meaning of the communication which meets all of the following:
  - a. Has been sent or received by a user.
  - b. Is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public.
  - c. Is not readily accessible to the public.
- (7) Court. – The clerk of superior court or superior court judge, as provided in G.S. 1-7, or other court having competent jurisdiction over the estate, trust, fiduciary, or user, as applicable, or other matters relating to the content of this Chapter.
- (8) Custodian. – A person that carries, maintains, processes, receives, or stores a digital asset of a user.
- (9) Designated recipient. – A person chosen by a user using an online tool to administer digital assets of the user.
- (10) Digital asset. – An electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- (11) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (12) Electronic communication. – Has the meaning set forth in 18 U.S.C. § 2510(12).
- (13) Electronic-communication service. – A custodian that provides to a user the ability to send or receive an electronic communication.
- (14) Fiduciary. – An original, additional, or successor personal representative, guardian, agent, or trustee.
- (14a) Guardian. – A person appointed by a court to manage the estate of a living individual. The term includes a general guardian, a guardian of the estate, an interim guardian, and a standby guardian appointed under Chapter 35A of the General Statutes.
- (15) Information. – Data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.
- (16) Online tool. – An electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

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- (17) Person. – An individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, business trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.
  - (18) Personal representative. – An executor, administrator, special administrator, or person that performs substantially the same function under a law of this State other than this Chapter.
  - (19) Power of attorney. – A record that grants an agent authority to act in the place of a principal.
  - (20) Principal. – An individual who grants authority to an agent in a power of attorney.
  - (21) Reserved.
  - (22) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
  - (23) Remote-computing service. – A custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic-communications system, as defined in 18 U.S.C. § 2510(14).
  - (24) Terms-of-service agreement. – An agreement that controls the relationship between a user and a custodian.
  - (25) Trustee. – A fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes an original, additional, and successor trustee, whether or not confirmed by a court.
  - (26) User. – A person that has an account with a custodian.
  - (26a) Ward. – An individual for whom a guardian has been appointed. The term includes an individual for whom an application for the appointment of a guardian is pending.
  - (27) Will. – Includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

...

**"§ 36F-12. Disclosure of contents of electronic communications held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian all of the following:

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- (1) A written request for disclosure in physical or electronic form.
  - (2) A verified copy of the trust instrument, or a certification of the trust under G.S. 36C-10-1013, that includes consent to disclosure of the content of electronic communications to the trustee.
  - (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
  - (4) If requested by the custodian, any of the following:
    - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
    - b. Evidence linking the account to the trust.

**"§ 36F-13. Disclosure of other digital assets held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian all of the following:



- (1) A written request for disclosure in physical or electronic form.
- (2) A certified copy of the trust instrument or a certification of the trust under G.S. 36C-10-1013.
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
- (4) If requested by the custodian, any of the following:
  - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
  - b. Evidence linking the account to the trust.

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**SECTION 12.** This act is effective when it becomes law.  
In the General Assembly read three times and ratified this the 23<sup>rd</sup> day of June, 2016.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 9:18 a.m. this 30<sup>th</sup> day of June, 2016